

Foreign Business Act requirements eased for certain trades

BIZ INSIGHT

SPECIAL TO THE NATION

THE COUNCIL of State has endorsed a draft ministerial regulation that was approved by the Cabinet in July. This regulation will allow foreigners to conduct certain businesses without being required to obtain a foreign-business licence under the Foreign Business Act.

This change to the FBA is expected to be put into effect before year-end.

The draft regulation eases the restrictions on foreigners operating a representative or regional office. Currently, if a foreign company operates either of these types of offices, the office is only allowed to provide

limited non-revenue earning activities in Thailand after obtaining a foreign-business licence.

A representative or regional office is not a legal entity separate from its head office, which differs from the regional operating headquarters and international headquarters incentive schemes, which are only granted to companies registered in Thailand that are profit-generating.

The key distinction between a representative office and a regional office is the nature of the activities that can be provided for the benefit of the head office and, in some instances, its affiliates.

These business structures are quite restrictive and mostly used in the preliminary stages when a foreign interest is still considering whether to create a business presence in Thailand.

For tax purposes, although both representative and regional offices are non-profit-generating entities where all expenditures are borne by the head office, they are still required to comply with Thai tax regulations, including filing corporate-income-tax returns, which would always show them in a loss posi-

tion for tax purposes.

The businesses that are also included in this draft as services no longer restricted for foreigners are services related to banking including acting as an agent for the collection of insurance premiums and providing hire-purchase and leasing arrangements and certain legislated asset-management services.

Although the relaxation under the FBA is welcome, because of other current Thai licensing requirements and regulations in the banking, insur-

ance and asset-management industries, the relaxation is not expected to have a material impact on these service categories.

A foreign-business licence is also not required for a foreign service contractor under an agreement with a Thai governmental agency or state enterprise.

The relaxation to exempt foreign-business licences for service contractors working under agreements with government agencies and/or state enterprises is a step in the right direction. It allows government ministries and departments, as well as state enterprises, to expedite work with for-

eigners who may not necessarily have operations in Thailand, but who are best placed to provide services that the country requires.

This leniency does not pose any threat to the Thai service sector because foreign contractors may only perform work as stipulated in their government contracts. The bidding for such services is always open to Thai service contractors.

The measure could eventually promote Thailand's image in the field of international trade.

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